



STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of



DECISION

FOP/169064

PRELIMINARY RECITALS

Pursuant to a petition filed October 01, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 26, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency properly seeks to recover an overissuance of FS benefits in the amount of \$2,783 from the Petitioner for the period of November 13, 2013 – April 30, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Pang Thao Xiong
Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Debra Bursinger
Division of Hearings and Appeals

FINDINGS OF FACT

- 1. Petitioner (CARES # [redacted]) is a resident of Milwaukee County.

2. On November 13, 2013, the Petitioner’s husband [REDACTED] submitted a FS application. He reported a household of four including himself, the Petitioner, a minor child and an adult child. He reported Petitioner’s job at [REDACTED]. No other employment or household income was reported.
3. On November 19, 2013, the agency issued a Notice of Decision to [REDACTED] and the Petitioner informing them that the application for FS benefits was approved and they would receive \$298 for November, 2013 and \$497/month effective December, 2013. The benefits were issued for [REDACTED], the Petitioner and their minor child. The notice informed them that this was based on \$0 household income.
4. [REDACTED] and the Petitioner were divorced on January 29, 2014; however, they were residing in the same household at all times relevant herein.
5. On July 20, 2015, the agency received an alert of a wage discrepancy. The agency requested wage information for the Petitioner and [REDACTED]. The agency was unable to obtain information from [REDACTED]’s employer [REDACTED].
6. On July 15, 2015, the agency received verification from [REDACTED] that Petitioner was employed at [REDACTED] from October 30, 2013 – March 12, 2014. She was paid monthly. Her actual wages were as follows:

November, 2013	\$ 845.00
December, 2013	\$1,395.00
January, 2014	\$1,650.00
February, 2014	\$1,733.33
March, 2014	\$ 115.87 (earned income)
March, 2014	\$7,333.32 (severance pay)

7. The agency obtained wage information for [REDACTED] from [REDACTED]. It reports the following wage information for [REDACTED]:

Pay Date	Hours Worked	Gross Earnings
11/8/2013	0	\$1,654.40
11/22/2013	0	\$1,733.81
12/6/2013	0	\$1,654.40
12/20/2013	116	\$1,626.02
1/3/2014	112.68	\$1,638.22
1/17/14	113.17	\$1,630.07
1/31/2014	144.51	\$1,930.77
2/14/2014	121.83	\$1,653.42
2/28/2014	126.99	\$2,824.41
3/14/2014	120.51	\$1,629.51
3/28/14	125	\$2,893.91
4/11/14	127.41	\$1,676.81
4/24/14	128.18	\$2,955.01

Further, [REDACTED] reports actual wages of \$10,498.57 for the 4th quarter of 2013 and \$14,200 for the 1st quarter of 2014.

8. The state wage record for ■ indicates that his employer ■ reported the following actual gross wages paid to the Petitioner:
- | | |
|------------------|-------------|
| 4th quarter 2013 | \$ 9,107.31 |
| 1st quarter 2014 | \$13,283.22 |
9. On July 24, 2015, the agency issued a FS Overpayment Notice and worksheets to the Petitioner informing her that the agency intends to recover an overissuance of FS benefits in the amount of \$2,783 for the period of November 13, 2013 – April 30, 2014 due to ■'s and Petitioner's failure to provide accurate information.

DISCUSSION

The federal regulation concerning FS overpayments requires the State agency to take action to establish a claim against any household that received an overissuance of FS due to an intentional program violation, an inadvertent household error (also known as a "client error"), or an agency error (also known as a "non-client error"). 7 C.F.R. § 273.18(b), see also FoodShare Wisconsin Handbook, Appendix 7.3.2. Generally speaking, whose "fault" caused the overpayment is not at issue if the overpayment occurred within the 12 months prior to discovery by the agency. See, 7 C.F.R. § 273.18(b); see also FoodShare Wisconsin Handbook, App. 7.3.1.9. However, overpayments due to "agency error" may only be recovered for up to 12 months prior to discovery. FoodShare Wisconsin Handbook, 7.3.2.1. Overpayments due to "client error" may be recovered for up to six years after discovery. Id.

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by it was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the agency's evidence of correct action.

In this case, the agency contends that ■ and Petitioner received income from ■'s employer during the period of November, 2013 – April, 2014 that was not report to the agency. The agency submitted the ■'s state wage record. This shows the actual wages ■ reported that it paid ■ on a quarterly basis. The agency also submitted a report from ■ which also purports to report the actual wages paid by ■ to ■ for each pay period in addition to the hours worked. The agency argues that ■'s and the Petitioner's household income exceeded the FS program limit and they were not eligible for FS benefits for the time period of November 13, 2013 – April 30, 2014. The agency asserts this is ■'s and the Petitioner's error because they failed to report the income.

At the hearing, ■ testified that he was laid off from ■ in October, 2013. At that time, he took a lump sum severance package. He went back to work at ■ at the end of March or beginning of April, 2014. He did not renew the FS benefits because they no longer needed them. He testified that he reported at the time of application that he had been laid off from ■ and provided verification of his end date. He argues that he properly reported his income at the time of application. He testified that when he applied on November 13, 2013, he was asked for the last 30 days of pay. At that point, he had been laid off for more than 30 days and had not received any pay for the last 30 days.

Both the agency and ■ attempted prior to the hearing to obtain information from ■ about the ■'s period of being laid off as well as his severance package. The branch that ■ worked at is no longer operating and ■ no longer works for ■. Both the agency and ■ were unsuccessful at obtaining additional information.

With regard to the state wage record, ■ contends that the quarterly wages for the 4th quarter of 2013 reflect his lump sum severance pay given to him in October, 2013. With regard to the agency's evidence of his wages from ■, ■ points out a number of errors or inconsistencies in what is

contained in that document. Specifically, there are several pay periods showing 0 hours worked but wages paid. In addition, the weeks showing hours worked are inconsistent with regard to the pay as well as inconsistent with the fact that he was laid off. ■ stated that he does not know what or how the employer is required to report lump sum payments to the state or how it is reflected in the information from ■.

The agency was also unable to explain the inconsistencies in the information contained in ■ document. It does not appear to take into account that ■ received a lump sum severance in October, 2013 or that he was laid off for a period of 4 or 5 months. The number of hours worked and wages paid does not reflect a consistent hourly wage or salary. The information also is not consistent with the state wage record for ■. The agency was unable to explain how a lump sum severance package would be reported in the state wage record or ■ information.

The agency has the initial burden of demonstrating that ■ and the Petitioner did not properly report income and that household income was over the income limit for the FS program. The evidence presented regarding ■'s employment and wages is inconsistent and confusing. ■ testified credibly that he was laid off in October, 2013 and did not return to work until March or April, 2014. He testified credibly that he received a lump sum severance package in October, 2013. Neither the agency nor the ■ were able to get more specific information about how ■ reported ■'s severance package. With the evidence presented, I am unable to determine what the actual monthly household income was during the overpayment period or whether it exceeded the income limit. I also find no evidence that the Petitioner and ■ reported his employment status and household income inaccurately at the time of application. Therefore, I must conclude that the agency has not met its burden of presenting sufficient evidence to conclude that the Petitioner was overissued FS benefits for the period of November 13, 2013 – April 30, 2014. This decision does not prevent the agency from issuing a new overpayment claim if it is able to obtain better evidence of household wages during this period.

CONCLUSIONS OF LAW

The agency has not met its burden of presenting sufficient evidence to conclude that the Petitioner was overissued FS benefits for the period of November 13, 2013 – April 30, 2014.

THEREFORE, it is

ORDERED

That this matter is remanded to the agency to take all administrative steps necessary to rescind Claim # ■ and to cease all actions to collect an overpayment from the Petitioner on this claim. These steps shall be completed as soon as possible but no later than 10 days from the date of this decision.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 26th day of January, 2016

\sDebra Bursinger
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 26, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability